Stare decisis is apparent in the decisions of these courts as well. Many of the cases holding this doctrine are decided merely on precedent without other consideration and without reasoning. In some States there has been direct statutory provision on the subject,[40] which by necessity was followed by the courts; the provision being either to contradict the opposite doctrine, as held by the courts of the enacting State, or simply to avoid the possibility of the courts holding that a partial payment by one joint debtor should suspend the statute of limitations as to all.

Though the courts on either side have not wasted words in discussing the question, yet the conclusion may be fairly drawn from reasoning and from a heavy numerical majority of the decisions that the modern and better rule is that a partial payment by one joint debtor without the authority of the others will not suspend the running of the statute of limitations except as to the one making such payment.

CONSTITUTIONALITY UNDER THE FOURTEENTH AMENDMENT AND THE PROPOSED NINETEETH AMENDMENT OF STATE LAWS LIMITING JURY SERVICE TO MALE CITIZENS.—This question is of ever growing importance. As the wave of equal suffrage sweeps over the country, engulfing State after State and culminating finally in the proposal of a Federal constitutional amendment, great interest attaches to the question of the extent to which women will be accorded the same rights and duties as men. The scope of this note will be confined to a discussion of the effect of the grant of suffrage upon the right or duty of jury service. It should be noted that the majority of the supporters of the equal suffrage movement desire and expect by the amendment to vest women with all the rights, privileges and duties that men now enjoy and perform. Bearing in mind the natural tendency of the courts to construe a law in accordance with the expectations of its supporters, it seems probable that a point will be stretched, if necessary, to give the amendment the interpretation they desire. However, it is highly important that a question of such vital import should be considered from an unbiased viewpoint and decided in accordance with sound rules of statutory construction.

That a woman is a citizen cannot be denied. The Constitution is plain on that point.[1] As a citizen, she is entitled to all the rights, privileges and immunities enjoyed by other citizens and guaranteed by the Fourteenth Amendment. But there is a marked difference between rights given and duties imposed. The former are guaranteed by the Constitution and are enjoyed by all citizens alike; the latter are imposed by the legislature and are entrusted only to those deemed qualified for their performance. The determination of the qualifications of those performing State duties

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[40] Bailey *v.* Corliss, *supra;* State Bank *v.* Pease, 153 Wis. 9, 139 N. W. 767.

[1] U. S. Const., Amendment 14, § 1.

has always been considered a legislative function,[2] and this power of the legislature is unrestricted so long as the qualification is made in good faith and for the best interest of the community. Rights of citizens, however, should be and generally are embodied in the fundamental law of the land, above the mere control of the legislature. To illustrate this distinction: The right of jury trial is a fundamental right of every citizen, and the legislature would have no more power to deny this right to women than to men;[3] on the other hand, suffrage, besides being a right, is a duty owed to the State by those qualified to vote, and a citizen not otherwise qualified cannot simply by virtue of his citizenship demand that he be permitted to vote. Suffrage is not coëxtensive with citizenship.[4]

It becomes all important therefore to determine whether jury service is a matter of right or a matter of duty which the State has the power to regulate to the same extent that it has the power to regulate the qualifications of its public officials. On reason and principle and according to common acceptation, jury service is a matter of duty,[5] but the authorities and the decided cases bearing on the subject are in a somewhat confused state.[6] This confusion is to a large extent, if not entirely, due to an attempt on the part of the United States Supreme Court after the War between the States to protect the former slave from State legislation discriminating against him. Before the war practically all the States limited jury service to male citizens of the white race. After the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments to the Federal Constitution, numerous cases were appealed by negroes from the State courts to the United States Supreme Court on the ground that the States had violated the Constitution by refusing to select negro jurors.[7] The Supreme Court in all of these cases held that this discrimination against the negro was unconstitutional. Thus it was decided through necessity, as it were.

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[2] For example, a statute limiting those qualified to serve as Attorney for the Commonwealth to practicing attorneys.

[3] 16 R. C. L. 193.

[4] Minor *v.* Happersett, 21 Wall. 162. The Fourteenth Amendment does not confer the right to vote upon women.

[5] See Va. Code, 1919, § 5984. See *Ex parte* Mana (Cal.), 172 Pac. 986, in which it was held that the legislature in view of the fact that women had been given the right to vote had the power to pass a statute permitting women to serve on juries, thereby implying that without this special legislation they would not have been qualified for such service.

[6] *Ex parte* Virginia, 100 U. S. 339, holding that a State judge who fails to select as jurors negro citizens as well as white citizens commits an indictable offense; see dissenting opinion of Justice Field. Strauder *v.* W. Va., 100 U. S. 303, holding that a State statute limiting those qualified to serve on juries to whites was unconstitutional and void, Field, J., again dissenting. Harland *v.* Territory, 3 Wash. 131, 13 Pac. 453, holding that the right of jury service was not incidental to suffrage.

[7] See cases cited *supra* in note 6.

that jury service was a matter of right and protected by the so-called equal rights amendments. The court in these cases based its decisions upon the Fourteenth and Fifteenth Amendments, but upon a careful reading of the opinions it is clear that the court did not maintain that a privilege had been denied the negro race, but that the State in thus limiting jury service to whites decidedly impaired the right to a jury trial.[8] It was in effect a denial of the right of jury trial to the negro race. With the exception of these civil right cases, jury service has been treated by the legislatures and by the courts as a matter of duty and not a matter of right, as is evidenced by the many qualifications placed upon it.[9] The Fourteenth Amendment did not guarantee to all citizens matters of duty as distinguished from matters of right.[10] The effect of the proposed Nineteenth Amendment will be to impose upon women the duty of voting. But the imposition of one duty does not carry with it another entirely different duty. That jury service is not incidental to suffrage was held in the recent case of *In re Grilli,* 179 N. Y. Supp. 795.[11]

There is, however, as has been seen above, at least one restriction upon the power of the legislature to determine the qualifications of jurors, namely, that the right to a jury trial shall remain inviolate.[12] If the exclusion is not made in good faith and in the belief that it is to the best interest of the community but is the result of prejudice, it impairs the right to a jury trial.[13] Does the

[8] In the majority opinion, delivered by Mr. Justice Strong, in the Strauder case, *supra,* it is stated: "The right to a trial by jury is guaranteed to every citizen of West Virginia by the Constitution of that State, and the constitution of juries is a very essential part of the protection such a mode of trial is intended to secure. The very idea of a jury is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine. * * * It is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors, and which, therefore, operate in some cases to deny to persons of those classes the full enjoyment of that protection which others enjoy."

[9] Harland *v.* Territory, *supra.* Va. Code, 1919, § 5984.

[10] Minor *v.* Happersett, *supra.* Mr. Justice Field in a dissenting opinion in *Ex parte* Virginia, *supra,* said: "But the privilege or the duty, whichever it may be called, of acting as a juror in the courts of the country, is not an incident of citizenship. Women are citizens; so are the aged above sixty, and children in their minority; yet they are not allowed in Virginia to act as jurors. Though some of these are in all respects qualified for such service, no one will pretend that their exclusion by law from the jury list impairs their rights as citizens."

[11] Also Harland *v.* Territory, *supra.*

[12] See Va. Const., § 11.

[13] See *Ex parte* Virginia, *supra.* "The constitutional provision that 'the right of trial by jury shall remain inviolate' means that it shall not be destroyed or annulled by legislation, nor so hampered or restricted as to make the provision a nullity. In this connection the term 'inviolate' connotes freedom from substantial impairment. It in no sense imports immunity from all regulation. The cardinal principle is that the essential features of trial by jury as known at common law must be preserved and its benefits secured to all entitled to that right. And

exclusion of women from jury service then amount to an impairment of this right? To answer this question, it is first necessary to determine whether women are excluded because of prejudice or because it is deemed best for society. The exclusion of the negro from the jury impaired the right of the negro to a jury trial, because he was disqualified as a result of race prejudice. But the exclusion of woman, far from being prejudicial, is, if anything, beneficial to her. She may not have the right to be tried by a jury of her equals, but she has the unique privilege of being tried by a jury of her admiring inferiors. By a jury of peers is meant nothing more than a jury of fellow citizens.[14]

In conclusion, since jury service is not a matter of right and the exclusion of women therefrom is not a violation of the constitutional provision that the right to a jury trial shall remain inviolate, the determination of jury qualifications remains a legislative function.[15]

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so the making of reasonable regulations and conditions in regard to the enjoyment of the right is not a denial or impairment thereof, * * *." 16 R. C. L. 196.

[14] *In re* Grilli, *supra.*

[15] *Ex parte* Mana, *supra;* Harland *v.* Territory, *supra;* McKinney *v.* State, 3 Wyo. 719, 30 Pac. 293, 16 L. R. A. 710. The point decided in the latter case was that a man could not object to being tried by a jury of men, and the court refused to decide the question whether or not women were qualified jurors, but the case is strong *dictum* for the contention that jury service is a matter of duty, not of right.